

Nearly half of accused harassers can return to work

14 November 2019



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What happens behind the scenes when employees are accused of harassment? New research from Michigan State University revealed that almost half of accused harassers can go back to work when disputes are settled by arbitrators—or, third-parties who resolve disputes.

The findings, published by the *Hofstra Labor & Employment Law Journal*, closely examine the outcomes of arbitration awards involving harassers, as well as providing insight as to whether arbitration is the best solution to addressing [workplace harassment](#).

"With all of the issues our society is facing right now, I wanted to figure out why we weren't doing a better job addressing [harassment](#) in the workplace," said Stacy Hickox, associate professor in MSU's School of Human Resources and Labor Relations. "I knew that it was challenging for employees to bring a claim of harassment to employers but wanted to know what employers are doing about actually responding."

Hickox and co-author Michelle Kaminski, associate

professor in MSU's School of Human Resources and Labor Relations, examined 60 arbitration cases in which employees accused of harassment were challenging their punishment. In most cases, the employee was discharged and seeking to return to work.

They found that only 52% of the cases upheld the punishment of getting fired. In 13% of cases, the accused harassers were allowed back to work without any punishment. In the other cases, 12% could come back to work with no back pay; 20% of the cases reduced the discipline to a suspension and 2% were reduced to a warning.

"I was very surprised by the number of people who were proven to be harassers and were allowed to come back to work," Hickox said. "It is interesting that the [employer's](#) anti-harassment policies play a part in whether the harasser's discipline was upheld. Policies that included specific examples of harassment were more often associated with the discipline being upheld."

The issue, Hickox said, is that accused harassers have rights as well and can claim they were disciplined without just cause. Some return to work because employers fail to provide enough proof that the harassment occurred, while others are reinstated because arbitrators are wedded to employers' policies—with no gray areas. Arbitrators also reinstate harassers because he or she has long tenure with the employer.

"To be sure that these harassers aren't allowed back into the workplace, employers need to look much more closely at harassment policies, as well as the power they give arbitrators in resolving these cases," Hickox said.

Hickox and Kaminski found that in many cases, a company thought their [employee](#) accused of harassment should have received a tougher punishment; however, an arbitrator is wedded to

the corporate policies and if a company's [policy](#) doesn't clearly prohibit the harassment, the arbitrator can't enforce it. Therefore, they recommend that anti-harassment policies be carefully crafted.

While arbitration can serve as a reasonable alternative to taking harassment cases to court, there are challenges that the current arbitration process presents. Arbitration takes place in private, which means that other employees and the public may never know the outcome. Additionally, Hickox said that most employees don't look very closely at new hire paperwork—or what rights they are signing away by agreeing to arbitration of all employment disputes.

"I believe that arbitration is a fair process and can be effective, but I'm a firm believer in consequences," Hickox said. "You can train people on harassment until they're blue in the face, but until there are clearer, more stringent policies from employers, the issue will continue."

Provided by Michigan State University

APA citation: Nearly half of accused harassers can return to work (2019, November 14) retrieved 27 November 2020 from <https://phys.org/news/2019-11-accused.html>

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